

Remark

Applicants respectfully request reconsideration of this application as amended. Claims 1, 5, 9, 13, 17, 19 and 20 have been amended. No claims have been cancelled. Therefore, claims 1-20 are present for examination.

35 U.S.C. §101 Rejection

The Examiner has rejected claims 1 and 9 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claim 1 is amended to further recite connections to a client device and to a server device. Claim 9 is amended as suggested by the Examiner.

35 U.S.C. §112 Rejection

The Examiner has rejected claims 1-20 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Examiner suggests that the specification does not provide an enabling description of evaluating the spoken utterance and (perhaps) of assigning a score. The enablement requirement pertains only to the claimed invention, not to unclaimed subject matter. As stated in MPEP §2461 "a patent need not teach, and preferably omits, what is well known in the art." (citing *In re Buchner*, Fed. Cir. 1991).

The cited reference Hansen provides information as to one method of evaluating a spoken utterance and assigning a numerical score as shown by the various formulas at the end of the specification.

As to measuring accuracy, the specification at paragraph 32 simply states that "the accuracy values may be numbers determined based on pronunciation or intonation or both and may be determined in any of a variety of different ways." A quick review of the published patents shows that much work has been done in this regard in the field of speech recognition, e.g. USPN 6,618,702, USPN 7,043,431, USPN 6,708,150 and of speech therapy, e.g. USPN 6,535,853, USPN 6,725,198, among others.

As to measuring duration, paragraph 33 states, "the time that it takes one or more native speakers to read the passage in seconds is taken as the benchmark duration for the utterance. When the user speaks the passage, the time that the user takes to speak the passage is also measured and this is used as the duration for the user. The ratio provides a measure of how close the user has come to the benchmark speed." Applicants submit that a person of average skill is able to construct timers sufficient for this purpose.

As to determining a score, paragraph 33 continues with "by multiplying accuracy and duration together as shown in Equation 1, the fluency score can reflect achievement in both areas." Paragraph 34 states that "the fluency score is shown as being factored by 100%." The specification includes additional suggestions for combining and weighting the scores that involve similarly simple arithmetic algorithms. Such calculations are well within the understanding of a person of average skill at the time of filing.

35 U.S.C. §102 Rejection

Hansen

The Examiner has rejected claims 1-20 under 35 U.S.C. §102(e) as being anticipated over Hansen, et al., U.S. Patent Publication No. 2004/0193409 (“Hansen”). Hansen describes equations for measuring fluency in a computer language learning environment. However, the independent claims are amended to recite features not contemplated by Hansen including finding a language oral practice model for the student, uploading scores and displaying a ranking of the score as compared to the scores of other students. Accordingly, the rejection is, respectfully, traversed.

Conclusion

Applicants respectfully submit that the rejections have been overcome by the amendment and remark, and that the claims as amended are now in condition for allowance. Accordingly, Applicants respectfully request the rejections be withdrawn and the claims as amended be allowed.

Invitation for a Telephone Interview

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.


Request for an Extension of Time

Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: June 30, 2010



Gordon R. Lindeen III
Reg. No. 33,192

1279 Oakmead Parkway
Sunnyvale, California 94085-4040
(303) 740-1980